
IN THE SUPREME COURT

STATE OF NORTH DAKOTA

Erika Bjornson, by and through her guardian and
parent Jan Bjornson, and Jan Bjornson, individually, Plaintiffs and Appellees
v.

Guaranty National Insurance Company, Defendant and Appellant
and

Farmers Insurance Exchange, Defendant

Civil No. 930212

Appeal from the District Court for Stark County, Southwest Judicial District, the Honorable Maurice R.
Hunke, Judge.

DISMISSED.

Opinion of the Court by Neumann, Justice.

Mackoff, Kellogg, Kirby & Kloster, PC, P.O. Box 1097, Dickinson, ND 58602-1097, for plaintiffs and
appellees; argued by Timothy A. Priebe.

Howe, Hardy, Galloway & Maus, PC, P.O. Box 370, Dickinson, ND 58602, for defendant and appellant;
argued by Michael J. Maus.

[510 N.W.2d 623]

Bjornson v. Guaranty National Insurance Company

Civil No. 930212

Neumann, Justice.

Guaranty National Insurance Company (Guaranty) appealed from a district court judgment awarding
damages to Erika Bjornson. We conclude that the trial court improvidently certified the judgment as final
under Rule 54(b), N.D.R.Civ.P., and we dismiss the appeal.

Jeff Bjornson, Erika's father, was killed in an automobile accident in Arizona while he was riding in a car
driven by Rodger Rosaaen. The liability insurer of Rosaaen's vehicle, Old Hickory Casualty Insurance
Company, settled with three sets of claimants, paying them, collectively, the \$30,000.00 liability limits
under Rosaaen's policy. In that settlement Erika and Jan Bjornson, Erika's mother, each received \$5,000.00.

At the time of the accident, Jeff had an automobile liability insurance policy with Guaranty and Jan had a
policy with Farmers Insurance Exchange (Farmers). Jan and Erika sued Guaranty and Farmers seeking

compensation under the Uninsured Motorist (UM) and Underinsured Motorist (UIM) provisions of those policies.

The trial court construed the UM and UIM provisions of Guaranty's liability policy and, based upon stipulated facts between Guaranty and Jan and Erika, awarded Erika \$30,000.00 plus interest. Farmers refused to stipulate to the facts, and a trial is pending on Jan and Erika's claims for damages against Farmers. The trial court entered a Rule 54(b), N.D.R.Civ.P., certification, and Guaranty appealed.

Under Rule 54(b), N.D.R.Civ.P., a trial court "may direct the entry of a final judgment as to one or more but fewer than all of the claims or parties only upon the express determination that there is no just reason for delay and upon an express direction for the entry of judgment." The burden is upon the party requesting Rule 54(b), N.D.R.Civ.P., certification to show extraordinary circumstances or that cognizable, unusual hardship to the litigants will arise if

[510 N.W.2d 624]

resolution of the issues on appeal is deferred. Slaubaugh v. Slaubaugh, 499 N.W.2d 99 (N.D. 1993); Janavaras v. Janavaras, 449 N.W.2d 578 (N.D. 1989). We are not bound by the trial court's determination, but we sua sponte review the certification to determine if the trial court has abused its discretion. Gissel v. Kenmare Township, 479 N.W.2d 876 (N.D. 1992).

No party requested Rule 54(b), N.D.R.Civ.P., certification. Upon construing the Guaranty insurance policy, the court entered that certification on its own initiative. In granting certification, the trial court merely stated that there was no reason for delaying entry of final judgment against Guaranty because "all claims against Guaranty have been disposed of, and said claims are independent from the remaining claims against Defendant Farmers." The parties conceded during oral argument that our determination of the issues raised on this appeal would impact Farmers' liability to Jan and Erika under its liability policy. However, Farmers is not a party to the partial judgment and is not represented in this appeal.

The trial court did not delineate any unusual or compelling circumstances in this case requiring judicial review before all claims are resolved against all parties. The parties did not present any evidence or argument to demonstrate that someone would suffer hardship or prejudice if early review is denied. Rule 54(b), N.D.R.Civ.P., was not adopted to authorize advisory opinions, Gissel, supra, 479 N.W.2d at 877, but to preserve our long-standing policy against piecemeal appeals. Peterson v. Zerr, 443 N.W.2d 293 (N.D. 1989). Under these circumstances, we conclude that the trial court abused its discretion in granting the Rule 54(b), N.D.R.Civ.P., certification.

Accordingly, we dismiss the appeal.

William A. Neumann
Beryl J. Levine
Herbert L. Meschke
Dale V. Sandstrom
Gerald W. VandeWalle, C.J.